

electricity
north west

Bringing energy to your door



Licences Vs Leases: What's the best option for community energy?

Community Connects workshop

3rd July 2020

Stay connected...



www.enwl.co.uk



10.00 Introduce and welcome

Helen Seagrave, Community Energy Manager, Electricity North West

10.05 The community energy perspective

Kate Eldridge, Greater Manchester Community Renewables

10.15 The legal perspective

Justin Butt, Stephens Scown LLP

11.00 Questions and answer session

11.15 Close



- Can you stay muted and turn your camera off unless you are talking
- The speakers will use their video when they are presenting.
- Questions can be raised at any time using the Q&A function
- During the Q&A session delegates can also use the “raise your hand” function to indicate they would like to ask a questions.



Our community and local energy strategy

You said

Our response

We'd like it to be easier to access ENWL

Dedicated point of contact; More face-to-face time; assistance with understanding technical issues; Community Connects engagement events; newsletters

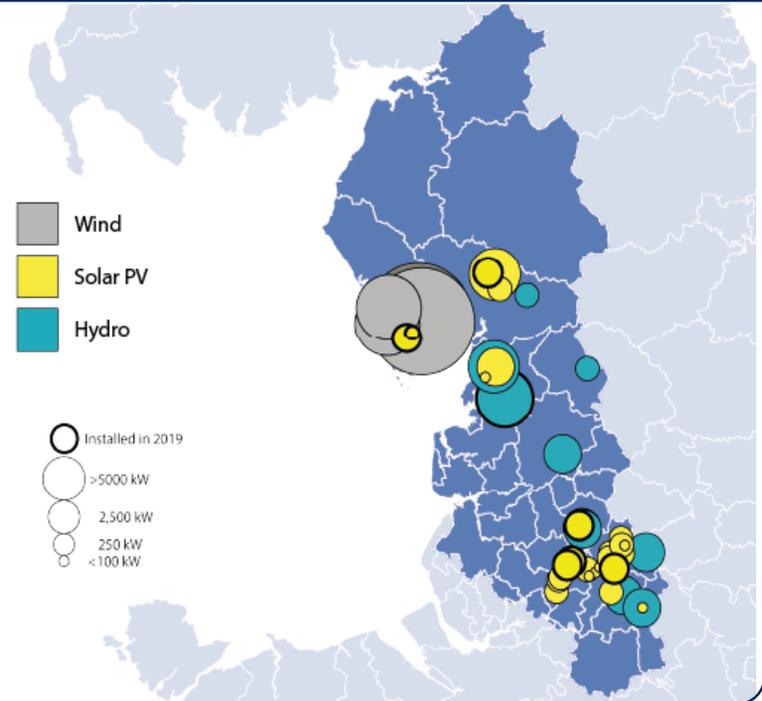
Can you help us to make our projects financially viable?

Empowering our communities fund; early engagement to find best point of connection; Finance workshop

Regulation is difficult to understand and not helping us

Regulation workshop; regular updates; support for Local Electricity Bill; engagement to develop our plans for ED2

Community energy in the north west



32 CE organisations
17.5 MW Installed
12 delivering storage, EE or transport projects



The community energy perspective

Kate Eldridge

Greater Manchester Community Renewables

GMCR



LEASES V LICENCES

3 JULY 2020

Presenter

Justin
Butt



Partner based in Exeter working nationally within Stephen Scown's Energy team.

Acting on behalf of Developers, Landowners, Funders and Community Benefit Societies.

Assisting in the acquisition sale funding refinancing of renewable energy projects including:

- solar – rooftop & ground mount
- wind
- battery storage
- grid
- hydro
- heat networks
- electric vehicle networks

E: j.butt@stephens-scown.co.uk

M: 07736884146



About Stephens Scown LLP

- UK Law Firm of the Year
- No.44 Sunday Times Best Companies to Work for
- Independently recognised as a legal “heavyweight”
- Awards – Best Managed National Firm; Best Leadership of a Mould Breaking Firm; Best Corporate Culture and national champion for the UK for customer focus
- Sonya Bedford – Head of Energy MBE



MBE awarded to Sonya Bedford, ECOE's legal director



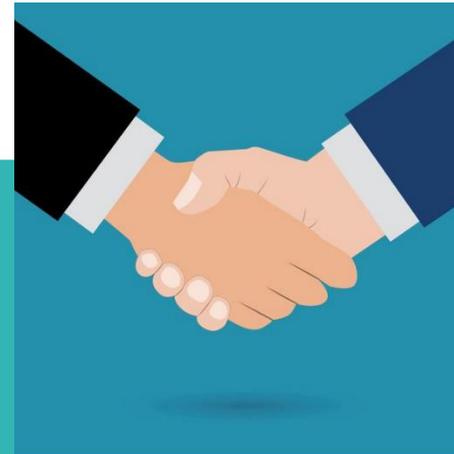
The Queen has named Sonya Bedford as a Member of the Most Excellent Order of the British Empire (MBE) in her 2018 birthday honours list. Sonya, who is partner and head of the renewable energy team at Stephens Scown LLP, has received the honour for services to community energy. She has helped to deploy many renewable projects. As well as being a founder director of ECOE, she sits on the board of another three community energy groups, including South Dartmoor Community Energy and Bath and West Community Energy.

'I wouldn't have been given an award if I didn't have so many great people to help and so many great community actions to take forward,' Sonya said after



Why do you need a Lease or Licence?

1. A lease and a licence are both types of a contractual agreement between the landlord or licensor and the tenant or licensee.
2. The contract sets out the terms the Landlord and Tenant or Licensor or Licensee must adhere to.
3. Leases and licenses grant permission for using someone else's land or property for a specific period of time.
4. A lease or licence can be used to protect investment into a property/an expensive asset.
5. A gentleman's agreement is not enough.



What is a Lease?

With a lease, a relationship exists between the user, usually known as the tenant and the landlord.

1. A Lease is a right granted by the Landlord to the Tenant to **exclusive possession** of that property (or part of it), made for a certain term in consideration of a fee laid out in the lease agreement.
2. A lease creates an interest in the property. This differs from a licence which is a personal contract.
3. A lease can be transferred (assigned) to another party and, if registered on the title to the property, is binding on a new owner of the property.
4. A lease is not revocable (other than subject to any conditions set out in the lease (e.g. a redevelopment or break clause)).



What is a Licence?



- A licence is simply permission for a licensee to do something on a licensor's property.
- A licence is by definition not a lease: it is a **personal right** or permission that offers no security.
- A licence entitles the licensee to use the land for the purpose authorised by the licence and does not create an estate in land.
- The distinguishing feature of a lease, as opposed to a licence, is that the tenant has **exclusive possession** and control of the property.
- *Principle established in Street v Mountford:*

"If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence."



Exclusive Possession and Control

There are two crucial distinctions between a license or a lease/tenancy. The terms “**exclusive possession**” and “**control**”:

- A tenant in a lease can exclude all others, including the landlord from the property.
- On the other hand, licenses do not grant tenants full control over the property. A licence is merely a right to occupy, it does not give a tenant the right to exclude the landlord.



Will labelling an agreement a licence make it a licence?

In a word, NO!

- Parties cannot turn what is in reality a tenancy, into a licence, by calling it a licence.
- The court will analyse the substance of the rights and obligations contained in the agreement.
- Where the document has any of the following characteristics, this may indicate that a "licence" is **not** a licence:

1. It grants exclusive possession. Generally a tenancy is created where there is exclusive possession.
2. It is for a fixed term.
3. It reserves a rent.

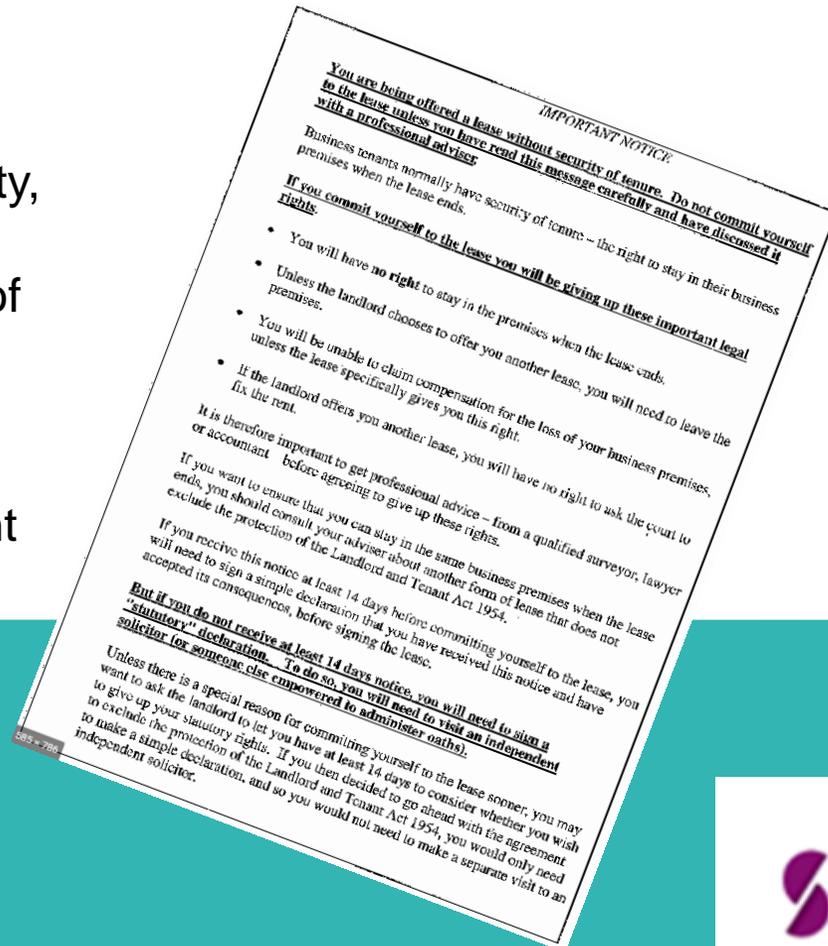


Why is the distinction so important?

The issue revolves around the provisions of the Landlord and Tenant Act 1954 (“the 1954 Act”).

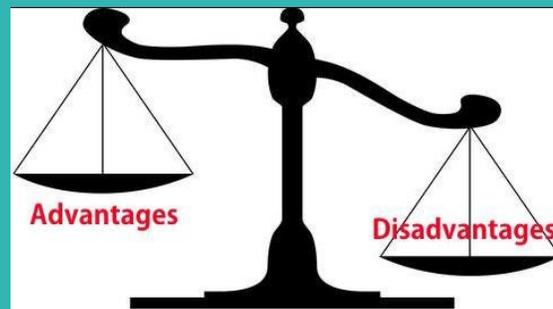
If the Landlord allows the Tenant into occupation under Licence, but in reality, it is a Lease, then that Lease is unlikely to have been contracted out of the protection of the 1954 Act.

= difficult for the Landlord to get back possession of the property if they want to use it for other purposes.



The Advantages of a Licence

1. The circumstances in which a party may determine a licence e.g. buy out clauses.
2. Costs:
 - Licence typically 16 pages long, including power purchase terms
 - Lease without power purchase terms typically 30 pages long
3. Potentially avoid restrictions on the title to the Property.
4. Stamp Duty Land Tax implications.
5. An arrangement which properly constitutes a licence to occupy is outside the ambit of the *LTA 1954* and confers no security of tenure on the licensee.



The Disadvantages of a Licence

1. Despite the document being labelled a licence, if exclusive possession is in fact granted, there is always the risk that it may be in fact a lease.
2. An licensee generally does not have the same degree of control over the property as it would have if it were granted a lease.
3. A licensee's occupation is precarious. If the landowner sells the land (even to a group company), the licence will end.
4. If the Licence terminates you have no right to enter the property in order to remove your equipment.



Key considerations when deciding Lease or Licence

1. What contract does the Landlord want?
2. Will the Landlord agree to a buyout clause in the event it proposes to sell or transfer the property?
3. Are there any restrictions on the title which need to be dealt with?
4. Are you borrowing any money or undertaking share offers – consider the future?
5. How quickly do you need to get the contracts in place?
6. Do you propose to keep or sell the asset in the future?



Previous questions and answers Part I

1. Is a licence easier for a site to agree to and why?
2. How easy can the landlord terminate the licence and can you remove the equipment?
3. How much does a licence or lease cost? Should we be paying the landlord's legal costs?
4. What is the benefit of having our lease noted at the Land Registry?
5. Time taken to negotiate a lease v licence?



Previous questions and answers Part II

1. If the landlord breaches the licence could we still get compensation for cost of equipment/loss of earnings?
2. We probably couldn't afford to fight a legal case, but our insurers? What happens in practice?
3. Are there any implications using a licence re: raising bank finance?
4. A key barrier to schools signing up is payment for removal and reinstallation for roof repairs – same with a licence?
5. Do you recommend any changes to documentation in view of FIT changes



What else should you consider?

- Heads of Terms
- Option Agreement
- Bankability
- Due Diligence
- Searches Required
- Indemnity Insurance to Cover risks



Any Questions





Questions can be asked either via the Q&A function or by “raising your hand”.

Keep up to date

Sign up for our newsletter

Visit the community and local energy section of our website.

www.enwl.co.uk/communityandlocalenergy

Get in touch

If you are developing a community or local energy project
please get in touch to discuss your plans

Contact details

Helen Seagrave

Community energy manager

Communityandlocalenergy@enwl.co.uk